

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MITCHELL S. TANCIO, et al.,

Plaintiff(s),

No. C 10-0606 PJH

v.

ORDER RE PENDING MOTIONS

SAXON MORTGAGE SERVICING, et al.,

Defendant(s).

Defendants filed a motion to dismiss the complaint on February 12, 2010, and noticed it for hearing on March 24, 2010. Plaintiffs' opposition was due on March 3, 2010, though none was filed. Defendants noted plaintiffs' non-opposition of their motion on March 10, 2010 and requested a ruling in their favor. Nonetheless, on March 18, 2010, the parties submitted a stipulation and request to continue the hearing on defendants' motion to dismiss, from March 24 to April 21, 2010. It was approved by the court on March 23, 2010.

In the meantime, plaintiffs filed a motion to amend their complaint on March 22, 2010, noticing it for hearing, improperly, on April 14, 2010. In accordance with the civil local rules, the proper date for hearing is April 28, 2010. Accordingly the court VACATES the April 14, 2010 date and schedules the hearing on the motion to amend for April 28, 2010. To conserve judicial resources, the hearing on defendants' motion to dismiss is CONTINUED to April 28, 2010, in order that both motions may be heard at the same time. The court notes, however, that plaintiffs' request to amend essentially concedes certain defects in their original complaint. Given that the court would likely afford plaintiffs at least one opportunity to amend their complaint even if the motion were granted, the court suggests that it might be more efficient for defendants to withdraw the current motion,

1 stipulate to permitting plaintiffs to file their proposed amended complaint, and then to move
2 against that complaint, if such action is warranted. Accordingly, the court orders the parties
3 to immediately meet and confer on this issue and to submit to the court no later than April
4 9, 2010, a stipulation as to how to most efficiently proceed with the two motions that are
5 pending. In any event, if the current motions go forward, they will both be heard on April
6 28, 2010. If any new motions are filed, they shall be filed in accordance with Civil Local
7 Rule 7-2.

8 **IT IS SO ORDERED.**

9 Dated: April 2, 2010



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11 PHYLLIS J. HAMILTON
12 United States District Judge
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